IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA, 1928

OP.No. 14030 of 2001(T)

PETITIONER:

THE KOZHIKODE PRIMARY CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO.4362, KOZHIKODE - 4, REPRESENTED BY ITS SECRETARY, V.KRISHNADASAN.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

1. THE TAHSILDAR (REVENUE RECOVERY), KOZHIKODE.

2. SHRI T.J.BABU, THURUTHIKATTIL HOUSE, KOODATHAI, P.O.VELANKODE, KOZHIKODE DISTRICT.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN, J.

O.P.NO.14030 OF 2001

Dated this the 1st day of January, 2007

JUDGMENT

Petitioner is a Co-operative Agricultural and Rural Development Bank Ltd. The contention of the petitioner in this original petition is that an extent of 50 cents of land comprised in R.S.No.116/1 in Koodathai Amsom, Palona Desom in Kozhikode Taluk was mortgaged in favour of the petitioner by way of security for availing a loan by the 2nd respondent herein. According to the petitioner, revenue recovery proceedings were initiated for recovery of the amount due and payable to the State Bank of India for which the property is proceeded with. It is the contention of the petitioner that yet another property was already mortgaged in favour of the Bank and further

loan was taken from the State Bank of India for purchase of Stage Carriage Bus bearing Regn.No.KL-11/C 8630. An extent of 25 cents of land situated in R.S.No.16/1 along with house No.12/5 situated in Koodathai Amsom was also mortgaged with the State Bank of India as security for the loan. According to the petitioner, the lst respondent ought to have proceeded against those properties rather proceeding against the property which was secured in favour of the petitioner.

2. It cannot be said that whether the loan availed by the 2nd respondent from the State Bank of India was towards the purchase of any motor vehicle and whether any property has been mortgaged in favour of the State Bank of India, in the absence of the State Bank of India being a party to the proceedings. Even assuming that what the petitioner has

contended is correct, nothing prevents the lst respondent in proceeding against the property mortgaged in favour of the petitioner under the Revenue Recovery Act. Of course, such proceeding shall be subjected to the prior encumbrance in favour of the petitioner. Therefore, at the time of conducting the sale of the property, if there is any prior encumbrance of the property and the petitioner moves the authorities in that behalf, necessarily such prior encumbrance should also be notified in the sale proclamation so that the buyer will be put on notice of such prior encumbrance in favour of the petitioner and the property can be sold only subject to the said prior encumbrance. The law being thus declared as above, the authorities shall proceed to sell the property only subject to the prior encumbrance in favour of the

petitioner.

Writ Petition is disposed of as above.

Issue photocopy.

P.R.RAMAN,
JUDGE.

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P.R.RAMAN, J.

O.P.NO.14030 OF 2001

JUDGMENT

1st January, 2007